

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1072 of 1998

in

SPECIAL CIVIL APPLICATION NO 2821 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?

4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : YES

DECD. RAVJIBHAI NARSINHBHAI THRO' HEIRS AND L.R.

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Appellants
MR ST MEHTA, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/11/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated August 4, 1998 rendered by the learned Single Judge in Special Civil Application No. 2821/98, by which order dated September 19, 1997 passed by the State of Gujarat under section 34 of the Urban Land (Ceiling & Regulation) Act, 1976 declaring 22646 sq.mts. of land to be excess land, is upheld.

2. Deceased Ravjibhai Narsinhbhai Patel was owner of land bearing Survey No. 109 admeasuring 10724 sq.mts. situated in Nagarvada of Vadodara City. A statement under section 6 of the Urban Land (Ceiling & Regulation) Act, 1976 ("Act" for short) was filed by him. The said statement was processed by the Competent Authority and Deputy Collector (ULC), Vadodara, who by his order dated May 28, 1993 held that the appellants were entitled to hold 9000 sq.mts. of land out of 20922 sq.mts. of land which also included the land which was reserved for the purpose of M.S.University. The State Government took the order of Competent Authority in suo-motu revision and after giving an opportunity of being heard to the appellants, held by an order dated September 19, 1997 that the extent of excess land was 22646 sq.mts. That order was challenged by the appellants by way of filing Special Civil Application No. 2821/98. The learned Single Judge has dismissed the petition by judgment dated August 4, 1998, giving rise to present appeal.

3. It may be mentioned that the Parliament has enacted The Urban Land (Ceiling and Regulation) Repeal Act, 1999 by which Urban Land (Ceiling and Regulation) Act, 1976 is repealed. Section 4 of the Repealing Act provides that all proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate. The proviso to the said section specifies that section 4 shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. We may state that during the pendency of Special Civil Application No. 2821/98, parties were directed to maintain status-quo and while dismissing the petition, the learned Single Judge had directed the parties to maintain statuq-quo regarding land bearing Survey No. 109, admeasuring 10724 sq.mts.

situated in Nagarvada of Vadodara city till September 4, 1998. The appellants had filed Civil Application No. 8541/98 praying the Court to stay execution, operation and implementation of the judgment and order of the learned Single Judge dated August 4, 1998 passed in Special Civil Application No. 2821/98. It was further prayed to stay execution, operation and implementation of the order of the State Government dated September 19, 1997 passed in the proceedings under section 34 of the Urban Land (Ceiling & Regulation) Act, 1976 against the appellants. The Division Bench has directed the parties to maintain status-quo during the pendency of the appeal in question. The record of the case does not indicate that after passing of order under section 34 of the Act, possession of the land in question is taken over either by the State Government or by any other competent authority. The stay which was granted by the learned Single Judge during the pendency of the petition operates even today. Mr. S.T.Mehta, learned A.G.P. has produced a communication dated November 20, 1999 addressed by the Competent Authority and the Deputy Collector (ULC), Vadodara. In the said communication, it is mentioned that the Government has not initiated any proceedings under section 10(5) of the repealed Act for the purpose of taking possession of the land which was declared to be excess by the Government. It is also mentioned therein that no action has been taken for resuming possession of the land declared to be excess land. The letter produced by the learned A.G.P. is ordered to be taken on record of the case. As possession of the land declared to be excess land is not taken either by the State Government or by any competent authority, it will have to be held that Letters Patent Appeal has abated in terms of provisions of section 4 of the repealing Act. The Letters Patent Appeal, therefore, deserves to be disposed of accordingly.

For the foregoing reasons, it is held that the Letters Patent Appeal has abated. We make it clear that we have not pronounced upon legality or otherwise of the order passed by the learned Single Judge which is impugned in the appeal or the order which is passed by the State Government under section 34 of the repealed Act. However, it is clarified that it will be open to the appellants to point out to the competent authority that the proceedings have abated in view of the provisions of the repealing Act. Letters Patent Appeal is dismissed as having abated, with no order as to costs. Interim relief granted in this appeal is hereby vacated.

(patel)